

# EXHIBIT H

2 UNITED STATES DISTRICT COURT  
3 WESTERN DISTRICT OF NEW YORK

ORIGINAL

4 ----- x  
5 MARK T. DUBLINO

6 Plaintiff

7 -vs-

8 SGT. JUSTIN BIEGAJ, SGT. ROBERT DEE,  
9 DEPUTY BRIAN THOMPSON, DEPUTY FRANK  
10 GELSTER, SGT. MR. CROSS, SGT. MR. ROBINSON,  
11 DEPUTY MR. P. GIARDINA, DEPUTY SHAWN WILSON

12 Defendants

13 ----- x

14 Civil Action No. 6:19-cv-6269-DGL

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Deposition of JUSTIN BIEGAJ taken pursuant to  
notice via videoconference on Thursday, July 8, 2021  
commencing at 9:25 a.m.

Reported by:

COMPUTER REPORTING SERVICE

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1                   J. Biegaj - Examination by Mr. Modica

2                   JUSTIN BIEGAJ

3                   called herein as a witness, being duly sworn,

4                   testified as follows:

5                   EXAMINATION BY MR. MODICA:

6                   Q.        Good morning, Sergeant. My name is Steve  
7                   Modica. I'm pro bono counsel for Mark Thomas Dublino.

8                   I'm going to ask you a series of questions. I'd  
9                   ask you to answer them to the best of your ability.

10                  If you don't understand the question, feel free to  
11                  ask me to rephrase it.

12                  Given that we're using Zoom it's particularly  
13                  important that we not talk over each other to make Mr.  
14                  DiMartino's job as easy as we can.

15                  So I will certainly wait until you're done  
16                  answering my question and I hope you're able to wait  
17                  until I'm done asking my question.

18                  Is that fair enough?

19                  A.        Fair enough.

20                  Q.        Are you currently employed by the Jail  
21                  Management Division of the Erie County Sheriff's  
22                  Department?

23                  A.        Yes.

24                  Q.        How long have you been employed by them?

25                  A.        Approximately thirteen and a half years.

1                   J. Biegaj - Examination by Mr. Modica

2                   Q.     And your current rank is as a sergeant,  
3 correct?

4                   A.     Yes.

5                   Q.     And were you a sergeant during 2018?

6                   A.     Yes.

7                   Q.     And where were you performing your work as a  
8 sergeant in 2018?

9                   A.     I'm sorry. I didn't prepare much for this  
10 question. I don't remember my exact assignment, but I  
11 was a supervisor at the holding center at that time.

12                  Q.     And that's the Erie County Holding Center,  
13 correct?

14                  A.     Correct.

15                  Q.     And were you working on the morning of March  
16 9th, 2018?

17                  A.     Yes.

18                  Q.     And I know it's some time ago, but if you  
19 recall, what were your duties that day?

20                  A.     To supervise deputies in my area, the floors,  
21 just day to day operations, handle any unusual  
22 incidents.

23                  Q.     Do you recall, did you have any interactions  
24 positive or negative with inmate Dublino before March  
25 9th of 2018?

1                   J. Biegaj - Examination by Mr. Modica

2         A.     I'm sorry?

3         Q.     Did you have any --

4         A.     I'm sorry. Can you repeat that?

5         Q.     Sure. Did you have any interactions with  
6 inmate Dublino positive or negative before March 9th of  
7 2018?

8         A.     No irregular interactions I should say, but I  
9 have dealt with him and we have -- our relationship I  
10 guess from the jail point of view was fine.

11        Q.     And, of course, you did interact with inmate  
12 Dublino on March 9th of 2018, correct?

13        A.     Yes.

14        Q.     Now, there's a video of at least part of your  
15 interaction with him on that day. Have you seen that  
16 video before?

17        A.     Yes, I have.

18        Q.     So I've got that here and it's been marked as  
19 Deposition Exhibit A, and as you may recall it's only  
20 about three minutes long.

21                  So what I would like to do is show you that video  
22 and I may stop and ask you a series of questions while  
23 we're going through the video.

24                  Is that acceptable to you?

25        A.     Yes.

1                   J. Biegaj - Examination by Mr. Modica

2                   Q.     For the record, I have pulled up Deposition  
3                   Exhibit A which is the video that we referred to there.

4                   For purposes of the record it consists of four  
5                   boxes. The top left box is labeled Alpha Hallway.

6                   Do you see that, Sergeant?

7                   A.     Yes.

8                   Q.     And the box below it on the left-hand side is  
9                   labeled Attorney Visit Sally Port. Do you see that?

10                  A.     Yes.

11                  Q.     And then on the right upper right side of the  
12                  screen is a box labeled Attorney Visit A.

13                  Do you see that?

14                  A.     Yes.

15                  Q.     And then below that on the bottom right is a  
16                  box entitled Attorney Visit B.

17                  Do you see that?

18                  A.     Yes.

19                  Q.     And you'll also notice there's a date stamp  
20                  on the video in each box. Suffice it to say it shows  
21                  March 9th of 2018 beginning around 10:22 a.m.

22                  A.     Yes.

23                  Q.     So I'm going to start playing the video. If  
24                  at any point you want me to stop it, please let me  
25                  know, and again, I may stop it -- I certainly am going

1                   J. Biegaj - Examination by Mr. Modica  
2 to want to stop it when you first come into view.

3                   A.        Okay.

4                   Q.        Thank you.

5 (Deposition Exhibit A played.)

6                   Q.        Okay. I've paused the upper left box  
7 entitled Alpha Hallway at 10:22 and 43.935 seconds in  
8 the a.m.

9                   Do you see yourself depicted in that frame?

10                  A.        Yes.

11                  Q.        Okay. Where are you?

12                  A.        I'm the one closest.

13                  Q.        So in the middle of the screen? Right now  
14 I'm circling it.

15                  A.        Yes.

16                  Q.        Okay. Do you recall how is it that you came  
17 to be in the alpha hallway on that date at that time?

18                  A.        I was in the supervisor's office on the  
19 ground floor and I was the lucky one to get on the  
20 elevator first and that's how I got off the floor  
21 first.

22                  Q.        And were you in the supervisor's office when  
23 you got the 10-99 call?

24                  A.        Yes, I was.

25                  Q.        We'll talk about that in a bit. I'm going to

1                   J. Biegaj - Examination by Mr. Modica  
2 resume the video.

3 (Deposition Exhibit A played.)

4                   Q. I paused it again. Is it fair to say you  
5 came through the alpha hallway through the attorney  
6 visit sally port and I paused it in the box where  
7 you're depicted in Attorney Visit A at 10:22 and 48.649  
8 seconds in the a.m.; is that correct?

9                   A. Correct.

10                  Q. And again, you're the first one in the middle  
11 of the paused screen?

12                  A. Yes.

13                  Q. And again, best of your recollection where  
14 are you headed?

15                  A. Towards inmate Dublino.

16                  Q. And if you look at the screen below in the  
17 bottom right, Attorney Visit B, can you tell me what  
18 you see there?

19                  A. I see Deputy Thompson.

20                  Q. And does he appear to be standing or does he  
21 appear to be kneeling?

22                  A. He appears to be kneeling.

23                  Q. Do you know why he's kneeling at that point?

24                  A. I believe he's attempting to gain control of  
25 inmate Dublino's hands.

1                   J. Biegaj - Examination by Mr. Modica

2                   Q.     All right. I'm going to continue the video.

3                   (Deposition Exhibit A played.)

4                   Q.     I'll pause it begin. If you look at the  
5                   Attorney Visit B box at 10:22 and 51.766 seconds a.m.,  
6                   is it fair to say you went from a standing position to  
7                   either a kneeling or below standing position?

8                   A.     Yes.

9                   Q.     And why did you do that?

10                  A.     I was attempting to gain control of  
11                  Dublino's I believe left hand or arm at that point, and  
12                  that's where I -- I struck my knee on the ground and  
13                  I -- eventually you'll see me take myself out of the  
14                  equation.

15                  Q.     And when you first arrived and you went down  
16                  did you notice what position inmate Dublino was on the  
17                  floor?

18                  A.     I believe he was on his belly.

19                  Q.     So it would be face down, correct?

20                  A.     Correct.

21                  Q.     And did you notice whether he was resisting  
22                  any commands from Deputy Thompson?

23                  A.     I don't recall.

24                  Q.     I'm going to restart the video again.

25                  (Deposition Exhibit A played.)

1                   J. Biegaj - Examination by Mr. Modica

2                   Q. Stop me when you feel like you jump out of  
3 the equation. Okay?

4                   A. Right at this point.

5                   Q. So which frame are you looking at, Sergeant?

6                   A. Lower right.

7                   Q. That's Attorney Visit B?

8                   A. Correct.

9                   Q. Can you tell me where are you depicted in  
10 that frame?

11                  A. I'm standing leaning over a group of deputies  
12 and inmate Dublino.

13                  Q. Is that you right there that I'm circling?

14                  A. Yes.

15                  Q. So for purposes of the record, we've paused  
16 the Attorney Visit B box frame at 10:22 and 59.874  
17 seconds in the a.m. and the witness indicated that he  
18 is essentially in the right center of the photo leaning  
19 down or leaning over a bit.

20                  Is that correct?

21                  A. Yes.

22                  Q. I'll start the video again.

23                  (Deposition Exhibit A played.)

24                  Q. I've paused the video again. Specifically  
25 I'd like you to focus on the Attorney Visit B box. I

1                   J. Biegaj - Examination by Mr. Modica  
2 paused it at 10:23 and 13.78 seconds in the a.m.

3                   Are you in the back of that frame in the center  
4 leaning a bit?

5                   A. Yes.

6                   Q. Do you recall what you were doing at that  
7 point?

8                   A. Probably wincing in pain.

9                   Q. And that's pain that you suffered when you  
10 struck your knee on the ground?

11                  A. Correct.

12                  Q. And which knee did you strike on the ground?

13                  A. My right knee.

14                  Q. I'm going to start the video again.

15 (Deposition Exhibit A played.)

16                  Q. I've paused the video again. If you could  
17 focus on the box Attorney Visit B, I paused it at  
18 10:23:27.907 seconds in the a.m.

19                  Is it fair to say that in this still frame you are  
20 the furthest away with your back to the camera?

21                  A. Yes.

22                  Q. And do you recall what you were doing at that  
23 point?

24                  A. Trying to shake off my banged up knee.

25                  Q. I'm going to resume the video.

1                   J. Biegaj - Examination by Mr. Modica

2 (Deposition Exhibit A played.)

3                   Q.     I'll note for the record that you walked back  
4 toward where the rest of the group was and you appear  
5 to be limping in some pain.

6                   Is that a fair statement?

7                   A.     Yes.

8                   Q.     I'm going to resume the video.

9 (Deposition Exhibit A played.)

10                  Q.     I've paused the video again. If you could  
11 look at the box Attorney Visit B, I paused it at 10:24  
12 and 12.651 seconds in the a.m.

13                  Is it fair to say that that is a group of five  
14 members of law enforcement with you being essentially  
15 the third one in the center of the photo?

16                  A.     Yes.

17                  Q.     And do you recall what you were doing at that  
18 point?

19                  A.     Just getting a look at Attorney Terranova.

20                  Q.     What if anything do you remember about the  
21 condition of Attorney Terranova when you looked in the  
22 room?

23                  A.     It was obvious he was in pretty rough shape.

24                  Q.     What --

25                  A.     He was bleeding from his face, both sides of

1                   J. Biegaj - Examination by Mr. Modica  
2 his face near his eyes, and that's about all I recall.

3                   Q.     I'm going to resume the video.

4 (Deposition Exhibit A played.)

5                   Q.     I've paused the video again. I'd like you to  
6 focus on the box labeled Attorney Visit Sally Port. I  
7 paused it at 10:24 and 39.245 seconds in the a.m.

8                   In this still are you the last person -- the person  
9 furthest right, is that you?

10                  A.     Yes.

11                  Q.     And again, your recollection -- is it fair to  
12 say that you went from the hallway outside the attorney  
13 conference room into the attorney visit sally port?

14                  A.     Yes.

15                  Q.     Do you recall why you did that, where you  
16 were going?

17                  A.     We were heading up to our infirmary on our  
18 delta level just to have inmate Dublino evaluated.

19                  Q.     And is that standard practice in any physical  
20 altercation involving an inmate?

21                  A.     Yes.

22                  Q.     I'm going to resume the video.

23 (Deposition Exhibit A played.)

24                  Q.     If you could look at the Alpha Hallway box,  
25 I've paused it at 10:24 and 53.469 seconds in the a.m.

1                   J. Biegaj - Examination by Mr. Modica

2                   It appears that several people have a moment or two  
3                   ago had gotten on an elevator. Is that your  
4                   recollection of what happened?

5                   A.     Yes.

6                   Q.     I can't quite see you in this still, but are  
7                   you still in the photo or are you on the elevator?

8                   A.     I believe I'm on the elevator at that point.

9                   Q.     Do you recall, were you in the same elevator  
10                  as inmate Dublino was?

11                  A.     I -- I don't recall.

12                  Q.     I'll resume the video.

13                  (Deposition Exhibit A played.)

14                  Q.     Certainly stop me if at any point from now on  
15                  you see yourself. I don't recall that you're seen in  
16                  any of this.

17                  For purposes of the record, the video has  
18                  concluded. Again, was I correct that once you appear  
19                  to exit on the elevator you were not seen at all after  
20                  that?

21                  A.     That's correct.

22                  Q.     Do you recall whether you had prepared a  
23                  memorandum about this incident?

24                  A.     Yes, I did.

25                  Q.     I want to show you what we have marked as

1                   J. Biegaj - Examination by Mr. Modica  
2 Deposition Exhibit L. Can you tell us if you recognize  
3 that document?

4                   A. Yes.

5                   Q. And what is that document?

6                   A. That's my statement as to what happened from  
7 my perspective.

8                   Q. And why did you prepare Deposition Exhibit L?

9                   A. That's part of our policy for unusual  
10 incidents or critical incidents as this one was.

11                  Q. And do you recall when you prepared  
12 Deposition Exhibit L?

13                  A. I don't recall. Shortly thereafter, maybe an  
14 hour or two.

15                  Q. And it's dated March 9th of 2018. Do you  
16 believe that's the day that you actually prepared it?

17                  A. Yes.

18                  Q. Let's look at some of the language that you  
19 used here.

20                  In the second sentence it says, "Upon my arrival I  
21 witnessed inmate Dublino, Mark" - with his ICN number -  
22 "lying face down on the floor."

23                  Is that consistent with what you recall as far as  
24 him being laying face down?

25                  A. Yes.

1                   J. Biegaj - Examination by Mr. Modica

2                   Q.     And then the next sentence says, "I ordered  
3 inmate Dublino to place his hands behind his back."

4                   Did I read that correctly?

5                   A.     Correct.

6                   Q.     Do you recall whether he resisted or complied  
7 with that instruction from you?

8                   A.     He -- I don't believe he was complying. I  
9 believe with the -- with the actions that were taking  
10 place it was just everything was happening very  
11 quickly.

12                  Q.     Okay. The next sentence reads, "I then  
13 attempted to secure inmate Dublino's upper body with my  
14 left forearm and gain control of Dublino's left arm  
15 with my right hand."

16                  Did I read that correctly?

17                  A.     Yes.

18                  Q.     Do you recall what Deputy Thompson was doing  
19 while you were engaged in that action?

20                  A.     I know he was -- he had to keep his K-9  
21 secure and I know he was trying to do that too as well  
22 as trying to help with securing inmate Dublino, but as  
23 far as what he was doing with his hands I don't know.

24                  Q.     The next sentence reads, "While doing so my  
25 right knee struck the floor causing sharp pain."

1                   J. Biegaj - Examination by Mr. Modica

2                   The next sentence reads, "At this time Deputy  
3 Gelster took over my position and applied handcuffs."

4                   Did I read those two sentences correctly?

5                   A.     Yes.

6                   Q.     And is that an accurate reflection of what  
7 happened at that point?

8                   A.     Yes.

9                   Q.     Did you also prepare a use of force report?

10                  A.     I did.

11                  Q.     I want to show you what we've marked as  
12 Deposition Exhibit M. Do you recognize that document?

13                  A.     Yes.

14                  Q.     What is it?

15                  A.     It's our county use of force report.

16                  Q.     And did you also prepare this on March 9th of  
17 2018?

18                  A.     Yes, I did.

19                  Q.     As far as you know is the information in that  
20 report accurate?

21                  A.     Yes.

22                  Q.     Did you also prepare an accident report for  
23 the injury you suffered to your knee?

24                  A.     Yes.

25                  Q.     I want to show you what we've marked as

1                   J. Biegaj - Examination by Mr. Modica

2 Deposition Exhibit N. Do you recognize that?

3                   A. Yes.

4                   Q. What is that?

5                   A. It's just a standard employee accident  
6 report.

7                   Q. And is it correct that the report indicates  
8 you suffered an injury to your right knee?

9                   A. Yes.

10                  Q. And again, that injury to your right knee was  
11 sustained during the attempt to subdue inmate Dublino?

12                  A. Correct.

13                  Q. What is a 10-99?

14                  A. A 10-99 is an officer in trouble call.

15                  Q. And I believe you mentioned earlier you were  
16 in the supervisor's office when you got that 10-99  
17 call.

18                  Is that your recollection?

19                  A. Yes.

20                  Q. And you went directly to the attorney  
21 conference room area after you got the call?

22                  A. Yes.

23                  Q. Now, inmate Dublino made some allegations of  
24 what he claims occurred outside the view of the camera.  
25 If you recall, earlier there are certain times that the

1                   J. Biegaj - Examination by Mr. Modica  
2     camera does not show events that occurred below the  
3     height of the camera.

4                   Is it fair to say that the camera doesn't show  
5     everything that happened in that hallway that day?

6                   A.     Yes.

7                   Q.     And specifically he alleges that you stomped  
8     and stepped on him while he was on the ground targeting  
9     his head and his back.

10                  Did you do that?

11                  A.     No.

12                  Q.     Other than what you described as far as  
13     trying to secure his arm and then you striking your  
14     knee, did you have physical contact with any other  
15     parts of inmate Dublino's body?

16                  A.     No.

17                  Q.     And you saw on the video and probably recall  
18     that there was a response team of folks that arrived;  
19     is that fair?

20                  A.     Yes.

21                  Q.     And from the time that you arrived until the  
22     time that Dublino was subdued did you hear Mr.  
23     Terranova say anything?

24                  A.     I don't recall.

25                  Q.     There was an allegation that Mr. Terranova

1                   J. Biegaj - Examination by Mr. Modica  
2   was encouraging either you or some of your colleagues  
3   to kick Dublino's ass.

4                   Do you recall anything like that?

5                   A.     No.

6                   Q.     From the time that you arrived until the time  
7   that Dublino was subdued, do you recall Dublino saying  
8   anything?

9                   A.     I don't recall.

10                  Q.     You mentioned earlier that after the  
11   altercation Dublino was removed and brought to the  
12   infirmary.

13                  Is that standard practice in a circumstance like  
14   this?

15                  A.     Yes.

16                  Q.     The video certainly showed him going through  
17   the alpha hallway and getting on the elevator.

18                  What happened after he got on the elevator; how did  
19   he get to the infirmary from there?

20                  A.     Take the elevator to our delta level which is  
21   our third floor, exit to your left and then make a  
22   quick right through a hallway and you'll wind up in the  
23   infirmary.

24                  Q.     To your knowledge are there cameras in that  
25   area once you exit the elevator on the delta level

1                   J. Biegaj - Examination by Mr. Modica

2     third floor?

3     A.     Yes.

4     Q.     As part of this litigation I believe that  
5     there was either not footage available from inmate  
6     Dublino or it wasn't secured.

7                   What do you know about that?

8     A.     I don't know.

9     Q.     Did you go to the infirmary with the members  
10    of the response team?

11    A.     I did.

12    Q.     And for what purpose did you do that?

13    A.     Just to be an additional supervisor  
14    witnessing everything and then I --

15    Q.     Do you recall -- I'm sorry.

16    A.     No. Go ahead. Ask your question.

17    Q.     Do you recall who accompanied inmate Dublino  
18    to the infirmary?

19    A.     I do not.

20    Q.     I'll represent to you that there was  
21    testimony earlier in the case that it was Deputy  
22    Gelster and Deputy Giardina who brought Dublino to the  
23    infirmary.

24    A.     Okay. Fair enough.

25    Q.     Is that possible at least?

1                   J. Biegaj - Examination by Mr. Modica

2       A.     Yes, because as I witnessed on the video they  
3     were the escorts escorting him to the elevator.

4       Q.     Did you also at some point take photographs  
5     of inmate Dublino's physical condition after the  
6     altercation?

7       A.     Yes.

8       Q.     And how did that come to be?

9       A.     That's, again, standard practice for any  
10    physical altercation.

11      Q.     Did someone ask you to do that or was that  
12    something that you were expected to do as part of your  
13    responsibilities?

14      A.     That's just something that I thought I would  
15    do to speed things up a little bit.

16      Q.     We do have a series of photos. I'm going to  
17    show those to you.

18      I am going to show you what we have marked as  
19    Deposition Exhibit D. Are you able to see that photo?

20      A.     Yes.

21      Q.     Can you tell me what that photo depicts?

22      A.     That's a front view of inmate Dublino.

23      Q.     Is it fair to say that Deputy Gelster is on  
24    the left of the photo, inmate Dublino's right?

25      A.     Yes.

1                   J. Biegaj - Examination by Mr. Modica

2                   Q.     And is it also fair to say that Deputy  
3 Giardina is on the right side of the photo, inmate  
4 Dublino's left?

5                   A.     Yes.

6                   Q.     Is it your recollection that you took this  
7 photograph?

8                   A.     Yes.

9                   Q.     At any point while you were taking this photo  
10 and some others I'll show you did you ask Dublino  
11 whether he was injured?

12                  A.     I don't recall.

13                  Q.     Do you recall whether he said anything to you  
14 or the other deputies while you were taking the photos?

15                  A.     No.

16                  Q.     Do you recall whether Dublino made any noises  
17 like a groan, anything like that?

18                  A.     No.

19                  Q.     Did you observe any injuries to inmate  
20 Dublino while you were taking these photos?

21                  A.     Just to his hands I believe.

22                  Q.     I'll show you a photo on that. This is again  
23 Deposition Exhibit D. I'm going to show you another  
24 one now.

25                  I'm showing you what has been marked as Deposition

1                   J. Biegaj - Examination by Mr. Modica

2   Exhibit E. Do you see that photo in front of you?

3   A. Yes.

4   Q. Can you tell me what that depicts?

5   A. That's a profile view of Dublino's left side.

6   Q. Again, is that a photo that you took?

7   A. Yes.

8   Q. And is it also accurate like in the previous  
9   photo that Deputy Gelster is depicted in part on the  
10   left side of the photo, the right side of inmate  
11   Dublino?

12   A. Yes.

13   Q. And is it also correct that Deputy Giardina  
14   is depicted on the right side of the photo, the left  
15   side of inmate Dublino?

16   A. Yes.

17   Q. Just for some context, what room is this  
18   photo being taken in?

19   A. I'd be wrong if I guessed, but I believe it's  
20   exam room 1 maybe.

21   Q. But that's part of the infirmary, correct?

22   A. Yes, it is.

23   Q. And again, I recognize that the picture isn't  
24   broad enough to tell you so I appreciate at least the  
25   effort.

1                   J. Biegaj - Examination by Mr. Modica

2                   Is it fair to say in Deposition Exhibit E inmate  
3 Dublino has his eyes closed?

4                   A.     Yes.

5                   Q.     Is that an indication or did he say why he  
6 closed his eyes at that point?

7                   A.     No.

8                   Q.     I want to show you what we've marked as  
9 Deposition Exhibit F. Can you tell what that shows?

10                  A.     That's a profile of inmate Dublino's right  
11 side.

12                  Q.     And again, that's a photo you took, correct?

13                  A.     Yes.

14                  Q.     Fair to say the positioning of Deputies  
15 Gelster and Giardina are the same as described in the  
16 earlier photos?

17                  A.     Yes.

18                  Q.     And had you taken photos of inmates involved  
19 in altercations before March 9th of 2018?

20                  A.     Yes.

21                  Q.     And the practice of photographing them  
22 straight on and then at least each profile, is that  
23 something that you typically do or is that unusual in  
24 this situation?

25                  A.     No. That's something we typically do.

1                   J. Biegaj - Examination by Mr. Modica

2           Q.     The last photo I want to show you is what  
3     we've marked as Deposition Exhibit G. Can you tell  
4     what that photo depicts?

5           A.     It's a picture of inmate Dublino's left and  
6     right hand.

7           Q.     And again, is that a picture that you took?

8           A.     Yes.

9           Q.     And how do you know that that's inmate  
10    Dublino?

11          A.     Well, we were lucky enough to have his wrist  
12    band showing.

13          Q.     And do you recall taking a picture of his  
14    hands?

15          A.     Yes.

16          Q.     And why did you decide to take a picture of  
17    his hands?

18          A.     To depict the injuries that were -- that were  
19    on his hands.

20          Q.     And can you describe for me what you would  
21    say are the injuries shown in this photo?

22          A.     It looks like he's got an injury to his  
23    middle knuckle on the -- on his right hand.

24          Q.     Okay. His right hand being the left side of  
25    the photo, correct?

1                   J. Biegaj - Examination by Mr. Modica

2                   A.     Correct.

3                   On his left hand on the right side of the photo it  
4                   looks like he has some injuries to his first two  
5                   knuckles.

6                   Q.     And again, to your recollection did he say,  
7                   "I hurt my hand in the altercation" or is that  
8                   something you observed or is there some other reason  
9                   you took a picture of his hands?

10                  A.     No.

11                  Q.     The photo Deposition Exhibit G shows a  
12                  bandage on the middle finger of inmate Dublino's right  
13                  hand.

14                  Do you know whether that Band Aid was on his finger  
15                  before or after the altercation?

16                  A.     It had to have been on before.

17                  Q.     And why do you say that?

18                  A.     At no point before I took the pictures was  
19                  inmate Dublino treated for anything.

20                  Q.     I'll direct your attention to the area of the  
21                  wrist of inmate Dublino's right hand which is the left  
22                  side of the photo.

23                  Tell me, does that indicate any injury to his right  
24                  wrist?

25                  A.     It's possible.

1                   J. Biegaj - Examination by Mr. Modica

2       Q.     Did he to your recollection complain of any  
3     injury to his wrist?

4       A.     No.

5       Q.     Fair to say in Deposition Exhibit G there are  
6     no handcuffs shown?

7       A.     That's fair to say.

8       Q.     Do you recall whether in the other three  
9     photos you took - Exhibits D, E and F - whether inmate  
10    Dublino was handcuffed when those photos were taken?

11      A.     I believe he was handcuffed.

12      Q.     Did you witness the removal of the handcuffs  
13    so that the photo in Exhibit G could be taken?

14      A.     I don't recall.

15      Q.     Do you recall how inmate Dublino was  
16    handcuffed? Meaning was he -- were his hands in front  
17    of his body or behind his body?

18      A.     His hands were behind his back when he was  
19    originally cuffed.

20      Q.     Do you recall having him handcuffed with his  
21    hands behind his back whether his palms were facing  
22    away from the center of his body or toward the center  
23    of his body?

24      A.     I don't recall.

25      Q.     Is there a standard way that deputies are

1                   J. Biegaj - Examination by Mr. Modica

2 ordinarily expected to handcuff inmates?

3                   A.      Palms away.

4                   Q.      When you say "palms away," again, from the  
5 center of the body, palms away from the center of the  
6 body?

7                   A.      Correct.

8                   Q.      Again, you can't really recall how he was  
9 handcuffed that particular day?

10                  A.     I do not recall.

11                  Q.     There are a number of other folks who like  
12 yourself were sued in this case. I just want to ask  
13 you about what if anything you know about their actions  
14 on March 9th of 2018.

15                  Let's start with Deputy Thompson. I think you  
16 indicated earlier that you believe he was accompanied  
17 by his K-9 when he interacted with inmate Dublino on  
18 March 9th of 2018.

19                  Is that correct?

20                  A.     Yes.

21                  Q.     And did you actually see the K-9 at that  
22 time?

23                  A.     Yes.

24                  Q.     If you recall how did the K-9 react during  
25 this altercation?

1                   J. Biegaj - Examination by Mr. Modica

2         A.     I don't recall.

3         Q.     Do you recall the name of the K-9?

4         A.     I believe it was Billi.

5         Q.     And I know you don't -- you indicated you  
6     don't recall how the dog reacted, but I want to ask you  
7     some specific things about whether the dog did or  
8     didn't do certain things.

9                   Let's start with did you see Billi bite Dublino?

10        A.     No.

11        Q.     Did you see Billi scratch Dublino?

12        A.     No.

13        Q.     Did you see Billi having any physical contact  
14     with Dublino at all?

15        A.     No.

16        Q.     Did you see Deputy Thompson lose control of  
17     Billi during the altercation?

18        A.     No.

19        Q.     Did you see Deputy Thompson holding a leash  
20     with Billi on it during the altercation?

21        A.     Yes.

22        Q.     And at any point did Deputy Thompson lose  
23     control over Billi?

24        A.     No.

25        Q.     Had you had the opportunity to observe Billi

1                   J. Biegaj - Examination by Mr. Modica

2 before March 9th of 2018?

3                   A. Yes.

4                   Q. What can you tell me if anything about the  
5 dog's demeanor?

6                   A. Quite honestly, if Deputy Thompson would have  
7 let him, Billi probably would have licked inmate  
8 Dublino. So that goes to show you about his demeanor.

9                   He was -- he was more of a family dog.

10                  Q. And what were Billi's responsibilities at the  
11 jail?

12                  A. He was a really good drug detection dog. So  
13 those were his main responsibilities.

14                  Q. I want to ask you about Sergeant Dee and  
15 Deputy Wilson.

16                  My client alleges that Sergeant Dee and Deputy  
17 Wilson grabbed his arms and hands and bent and twisted  
18 them in an abnormal position with extreme pressure.

19                  Did you see anything like that on March 9th of  
20 2018?

21                  A. No.

22                  Q. I want to ask you about Sergeant Cross. My  
23 client alleges that Cross stood directly over him and  
24 began stomping on his legs, ankles and feet while he  
25 was on the floor.

1                   J. Biegaj - Examination by Mr. Modica

2                   Did you see any physical contact between Sergeant  
3                   Cross and inmate Dublino?

4                   A.       No.

5                   Q.       I'm going to ask you a little bit about  
6                   Deputies Gelster, Giardina and Sergeant Jack Robinson.

7                   My client alleged that after he was picked up off  
8                   the ground and escorted to the infirmary that while  
9                   outside the vision of the cameras that Robinson ordered  
10                  Gelster and Giardina to wrench his arms.

11                  First of all, I believe your testimony was that you  
12                  didn't accompany them to the infirmary, but went later;  
13                  is that correct?

14                  A.       I may have been on the same elevator, but at  
15                  that time I was busy and -- and I don't recall seeing  
16                  anything like that.

17                  Q.       Do you recall whether once you got off the  
18                  elevator did you go directly to the infirmary or did  
19                  you do something before you took the photos?

20                  A.       I went directly to the infirmary before I  
21                  took the photos.

22                  Q.       So it's fair to say though at no point did  
23                  you observe Deputies Gelster, Giardina or Robinson be  
24                  directed or wrenching the arms of inmate Dublino at any  
25                  point?

1                   J. Biegaj - Examination by Mr. Modica

2                   A.       No.

3                   MR. MODICA: Okay. That's all I have. I  
4 appreciate your cooperation.

5                   THE WITNESS: You're welcome.

6                   MS. MOLISANI: We're all set. Thank you so  
7 much for coming in.

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1                   J. Biegaj - Examination by Mr. Modica

2                   REPORTER CERTIFICATE

3  
4                   I, John M. DiMartino, CSR, RPR, do hereby certify  
5                   that I did report in stenotype machine shorthand the  
6                   proceedings held in the above-entitled matter;

7                   Further, that the foregoing transcript is a true  
8                   and accurate transcription of my said stenographic  
9                   notes taken at the time and place hereinbefore set  
10                  forth.

11

12                  Dated 7/12/2021

13                  At Rochester, New York

14

15                  s/John M. DiMartino, CSR, RPR

16

17                  John M. DiMartino, CSR, RPR

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1                   J. Biegaj - Examination by Mr. Modica

2                   WITNESS CERTIFICATE

3  
4                   STATE OF                                 )

5                   COUNTY OF                                 )

6  
7                   I, Justin Biegaj, do hereby certify that I have  
8                   read the transcript of my testimony as taken under oath  
9                   on Thursday, July 8, 2021, and that said transcript is  
10                  a true, complete and correct record of what was asked,  
11                  answered and said during said deposition, and that the  
12                  answers on record therein, and as may be modified in  
13                  conformity with the attached errata sheet, are true and  
14                  correct.

*ORIGINAL*

15  
16  
17  
18                   \_\_\_\_\_  
19  
20  
21                   Subscribed and sworn to before me  
22                   this \_\_\_\_\_ day of \_\_\_\_\_, 2021  
23                   Notary Public  
24  
25

1                   J. Biegaj - Examination by Mr. Modica

2   In the Matter of:

MARK T. DUBLINO

**ORIGINAL**

3                   Plaintiff

-vs-

4                   SGT. JUSTIN BIEGAJ, SGT. ROBERT DEE,  
DEPUTY BRIAN THOMPSON, DEPUTY FRANK  
5                   GELSTER, SGT. MR. CROSS, SGT. MR. ROBINSON,  
DEPUTY MR. P. GIARDINA, DEPUTY SHAWN WILSON

6                   Defendants

Civil Action No. 6:19-cv-6269-DGL

7

8                   Errata sheet for the deposition of Justin Biegaj taken  
9                   on Thursday, July 8, 2021

10               PAGE	LINE	REASON FOR CHANGE
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